

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION**

**MIKETAVIOUS BROOKS
LA. DOC #447090
VS.**

**CIVIL ACTION NO. 3:10-cv-1886
SECTION P**

JUDGE ROBERT G. JAMES

SHERIFF ANDY BROWN, ET AL. MAGISTRATE JUDGE KAREN L. HAYES

REPORT AND RECOMMENDATION

Pro se plaintiff Miketavious Brooks, proceeding *in forma pauperis*, filed the instant civil rights complaint pursuant to 42 U.S.C. §1083 on December 10, 2010. Plaintiff is an inmate in the custody of Louisiana's Department of Public Safety and Corrections (LDOC). He is incarcerated at the Claiborne Parish Detention Center, Homer, Louisiana, but he complains that the defendants failed to protect him from violence at the hands of another inmate while he was incarcerated at the Jackson Parish Correctional Center (JPCC) on October 2, 2010. Plaintiff sued Jackson Parish Sheriff Andy Brown, JPCC Warden Dave Yelverton, and the JPCC. Plaintiff prayed for "financial compensation" and his immediate release from custody. This matter was referred to the undersigned for review, report, and recommendation in accordance with the provisions of 28 U.S.C. §636 and the standing orders of the Court. On February 17, 2011, plaintiff was ordered to amend his complaint on or before March 21, 2011, in order to provide the information necessary to conclude an initial review. Plaintiff has not complied with that order and has not contacted the court seeking an extension of time within which to respond. Further, plaintiff has not contacted the Court since January 26, 2011, when he filed his application to proceed in forma pauperis.

Law and Analysis

Federal Rules of Civil Procedure Rule 41(b) permits dismissal of claims “For failure of the plaintiff to prosecute or to comply with ... any order of court...” The district court also has the inherent authority to dismiss an action *sua sponte*, without motion by a defendant. *Link v. Wabash R.R.Co.*, 370 U.S. 626, 630-31, 82 S.Ct. 1386, 1388-89, 8 L.Ed.2d 734 (1962). “The power to invoke this sanction is necessary in order to prevent undue delays in the disposition of pending cases and to avoid congestion in the calendars of the [d]istrict [c]ourts.” *McCullough v. Lynaugh*, 835 F.2d 1126, 1127 (5th Cir.1988). Plaintiff’s complaint is ripe for dismissal pursuant to Rule 41.¹

Therefore,

¹The undersigned further finds that to the extent the applicable statute of limitations may bar plaintiff from re-filing the instant suit, then dismissal at this juncture effectively will constitute dismissal “with prejudice,” – “an extreme sanction that deprives the litigant of the opportunity to pursue his claim.” *Berry v. CIGNA/RSI-CIGNA*, 975 F.2d 1188, 1190 (5th Cir. 1992) (internal quotations omitted). Dismissal with prejudice for failure to prosecute or to comply with a court rule or order is warranted only where “a clear record of delay or contumacious conduct by the plaintiff exists and a lesser sanction would not better serve the interests of justice.” *See Millan v. USAA General Indem. Co.*, 546 F.3d 321, 325 (5th Cir. 2008) (citations and internal quotation marks omitted). In addition, the Fifth Circuit generally requires the presence of at least one of three aggravating factors: “(1) delay caused by [the] plaintiff himself and not his attorney; (2) actual prejudice to the defendant; or (3) delay caused by intentional conduct.” *Id.*

The undersigned finds that the requirements for a dismissal with prejudice are satisfied in this case. As discussed above, plaintiff has ignored a Court order which directs him to amend his complaint to provide the information necessary to complete an initial review as mandated by the provisions of 28 U.S.C. §§1915 and 1915A. Since plaintiff is proceeding *pro se*, it further appears that his failure to comply with the order must be attributable to his own neglect. Furthermore, since plaintiff is proceeding *in forma pauperis*, it is unlikely that he enjoys sufficient means to fund a lesser, monetary sanction. Moreover, dismissal of the case may be the least sanction where, as here, there is every indication that plaintiff no longer wishes to pursue his cause of action. Finally, plaintiff’s failure to contact the Court at any time during the past three months reflects his own contumaciousness or “stubborn resistance to authority” which is personally attributable to him as a *pro se* litigant.

IT IS RECOMMENDED that plaintiff's Civil Rights Complaint be **DISMISSED** in accordance with the provisions of FRCP Rule 41(b).

Under the provisions of 28 U.S.C. Section 636(b)(1)(C) and Rule 72(b), parties aggrieved by this recommendation have fourteen (14) days from service of this report and recommendation to file specific, written objections with the Clerk of Court. A party may respond to another party's objections within fourteen (14) days after being served with a copy of any objections or response to the district judge at the time of filing.

Failure to file written objections to the proposed factual findings and/or the proposed legal conclusions reflected in this Report and Recommendation within fourteen (14) days following the date of its service, or within the time frame authorized by Fed.R.Civ.P. 6(b), shall bar an aggrieved party from attacking either the factual findings or the legal conclusions accepted by the District Court, except upon grounds of plain error. *See, Douglass v. United Services Automobile Association*, 79 F.3d 1415 (5th Cir. 1996).

In Chambers, Monroe, Louisiana, April 26, 2011.



KAREN L. HAYES
U. S. MAGISTRATE JUDGE